1942. K **File No.** 0 Civil Pioneer/42

Legal Deptt.

A. **BRANCH**

Subject:— Opinions under the Civil Pioneers Force ordinance 1942

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Office of the R.I.A.

Under Government of India Notification No. T.R.A.-1092(3) dated 21st March 1942 the Central Government has entrusted to the Provincial Government its functions of making rules under clause (b) of sub-section (2) of section 26 of the Civil Pioneer Force Ordinance, 1942, in so far as such rules relate to providing for matters to be prescribed under section 17 of the ordinance. Sub-section (2) of section 17 provides that a summary court shall consist of a Magistrate of the First Class sitting with commandant or a Commissioned officer of the Civil Pioneer Force nomited by him and a third person to be selected by the Provincial Government in the prescribed manner. Sub-section (6) of section 17 provides that an appeal from sentence passed by a summary court may be made within a certain time to the prescribed authority. "Prescribed" means prescribed by rules made under the Ordinance (section 2(e)). Under section 26 rules have to be made "by notification in the official Gazette." The question is whether it is feasible for the Provincial Government (a) to select the third member of the summary court, and (b) to appoint the appellate authority, by means of an order instead of a rule.

2. As regards (a), what is required to be prescribed is the manner of section and not the selection itself. No notification of the name of the selected person is therefore required, though there is no legal objection to it. The manner of selection is now to be prescribed by the selecting authority itself, namely the Provincial Government. Hence the requirement to prescribe the manner is of a purely directory nature and therefore the fact that no rules have been made by Government in the matter will not debar Government from making selection of the third person and notifying the appointment in the Gazette as proposed.

3. As regards (b), the appellate authority itself is required to be prescribed, i.e., notified in the

official Gazette in the form of a rule. No order for this purpose which is not notified will suffice; notification being inescapable, it may conveniently be cast in the form of a rule.

Sd./- P.N.M.
21/10/
Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.), No. 8551; dated the 21st October 1948.

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